

1 JAMES M. WAGSTAFFE (95535)
 2 MICHAEL VON LOEWENFELDT (178665)
 3 MICHAEL K. NG (237915)
 4 **KERR & WAGSTAFFE LLP**
 5 101 Mission Street, 18th Floor
 6 San Francisco, CA 94105
 7 Tel.: 415-371-8500
 8 Fax: 415-371-0500
 9 Email: wagstaffe@kerrwagstaffe.com
 10 Email: mvl@kerrwagstaffe.com
 11 Email: mng@kerrwagstaffe.com

12 DAVID M. GIVEN (142375)
 13 NICHOLAS A. CARLIN (112532)
 14 **PHILLIPS, ERLEWINE & GIVEN LLP**
 15 50 California Street, 32nd Floor
 16 San Francisco, CA 94111
 17 Tel: 415-398-0900
 18 Fax: 415-398-0911
 19 Email: dmg@phillaw.com
 20 Email: nac@phillaw.com

21 *Interim Co-Lead Counsel for Plaintiffs*

22
 23
 24
 25
 26
 27
 28

**UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION**

MARC OPPERMAN, et al.,
 Plaintiffs,
 v.
 PATH, INC., et al.,
 Defendants.

Case No. 13-cv-00453-JST

CLASS ACTION

**STIPULATION TO PRESERVE RIGHTS AS
 TO CERTAIN CLAIMS AND TO DISMISS
 WITHOUT PREJUDICE AS TO THOSE
 CLAIMS AND AS TO DEFENDANT
 FACEBOOK, INC.; [PROPOSED] ORDER**

Hernandez v. Path, Inc., No. 12-cv-1515-JST
Pirozzi v. Apple Inc., No. 12-cv-1529-JST
Gutierrez v. Instagram, Inc., No. 12-cv-6550-JST
Espitia v. Hipster, Inc., No. 4:13-cv-432-JST
 (collectively, the “Related Actions”)

STIPULATION

1
2 WHEREAS, Plaintiffs Haig Arabian, Alan Beuershasen, Giuli Biondi, Lauren Carter,
3 Steve Dean, Stephanie Dennis-Cooley, Jason Green, Claire Hodgins, Gentry Hoffman, Rachelle
4 King, Nirali Mandaywala, Claire Moses, Judy Paul, Maria Pirozzi, Theda Sandiford and Greg
5 Varner, individually and on behalf of all others similarly situated (“Plaintiffs”) in the above-
6 captioned matters, filed a Consolidated Amended Class Action Complaint on September 3, 2013
7 (ECF No. 362);

8 WHEREAS, Defendants Facebook, Inc., and Gowalla, Inc. (“Defendants”) filed a motion
9 to dismiss on October 18, 2013 (ECF No. 394) directed to certain claims pertaining exclusively
10 to them (the “Fraudulent Transfer Claims”);

11 WHEREAS, that motion was granted by an order of this Court dated May 14, 2014 (ECF
12 No. 471), and the order also granted Plaintiffs leave to amend the Fraudulent Transfer Claims;

13 WHEREAS, certain Plaintiffs intend to re-plead some or all of the Fraudulent Transfer
14 Claims;

15 WHEREAS, the Fraudulent Transfer Claims raise issues secondary to the core issues of
16 liability in this action, and can and should be pursued, if at all, at a later date;

17 WHEREAS, rather than Plaintiffs’ re-pleading some or all of the Fraudulent Transfer
18 Claims at this time, the parties wish to avoid for now any additional proceedings on those claims
19 via voluntary dismissal, while preserving Plaintiffs’ right to pursue those claims at a later date
20 without prejudice as a result of any statute of limitations defense.

21 THEREFORE, Pursuant to Civil L.R. 7-12, Plaintiffs and Defendants stipulate as
22 follows:

23 1. Notwithstanding the amended pleading filed by Plaintiffs on today’s date, (A) the
24 Fraudulent Transfer Claims are deemed to have been re-pled in a timely manner in said pleading;
25 and (B) the Fraudulent Transfer Claims are deemed dismissed by Plaintiffs voluntarily and
26 without prejudice.

27 2. Any and all statute of limitations periods applicable to the Fraudulent Transfer
28 Claims shall be and hereby are tolled during the period commencing on today’s date and ending

1 on the date of entry of a judgment for or against defendant Gowalla Incorporated in this action
2 (the "Tolling Period"). .

3 3. The effect of this Stipulation will be to dismiss defendant Facebook, Inc., as a
4 party defendant in this action without prejudice in accordance with FRCP 41(a), each party to
5 bear their own costs and fees. For the avoidance of doubt, this dismissal shall be without
6 prejudice to Plaintiffs' right, in the event Plaintiffs obtain a judgment against defendant Gowalla
7 Incorporated, to contend that Facebook is liable to Plaintiffs for some or all of the judgment on
8 the basis of fraudulent transfer or conveyance.

9 Respectfully submitted,

10 Dated: June 27, 2014

KERR & WAGSTAFFE LLP

11 By: Michael Ng
12 James M. Wagstaffe (95535)
13 Michael von Loewenfeldt (178665)
14 Michael Ng (237915)
15 KERR & WAGSTAFFE LLP
16 101 Mission Street, 18th Floor
17 San Francisco, CA 94105
18 Tel.: 415-371-8500
19 Fax: 415-371-0500
20 wagstaffe@kerrwagstaffe.com
21 mvl@kerrwagstaffe.com
22 mng@kerrwagstaffe.com

23 David M. Given
24 Nicholas A. Carlin
25 PHILLIPS, ERLEWINE & GIVEN LLP
26 50 California Street, 32nd Floor
27 San Francisco, CA 94111
28 Tel: 415-398-0900
29 Fax: 415-398-0911
30 dmg@phillaw.com
31 nac@phillaw.com

Interim Co-Lead Counsel for Plaintiffs

32 Carl F. Schwenker (admitted *pro hac vice*)
33 LAW OFFICES OF CARL F. SCHWENKER
34 The Haehnel Building
35 1101 East 11th Street
36 Austin, TX 78702
37 Tel: 512-480-8427
38 Fax: 512-857-1294
39 cfslaw@swbell.net

Plaintiffs' Liaison Counsel

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Jeff Edwards (admitted *pro hac vice*)
EDWARDS LAW
The Haehnel Building
1101 East 11th Street
Austin, TX 78702
Tel: 512-623-7727
Fax: 512-623-7729
cfslaw@swbell.net

Jennifer Sarnelli
Kira German (admitted *pro hac vice*)
GARDY & NOTIS, LLP
501 Fifth Avenue, Suite 1408
New York, NY 10017
Tel: 212-905-0509
Fax: 212-905-0508
jsarnelli@gardylaw.com
kgerman@gardylaw.com

Plaintiffs' Steering Committee

ATTORNEYS FOR PLAINTIFFS

Dated: June 27, 2014

COOLEY LLP

By: /s/ Mazda K. Antia
Mazda Kersey Antia
COOLEY LLP
4401 Eastgate Mall
San Diego, CA 92121-1909
Tel.: (858) 550-6000
Fax: (858) 550-6420
mantia@cooley.com

Michael G. Rhodes
Matthew D. Brown
COOLEY LLP
101 California Street
Fifth Floor
San Francisco, CA 94111-5800
Tel.: 415-693-2000
rhodesmg@cooley.com
brownmd@cooley.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Christopher B. Durbin
COOLEY LLP
1700 Seventh Avenue, Suite 1900
Seattle, WA 98101-1355
Tel.: (206) 452-8700
Fax: (206) 452-8798
cdurbin@cooley.com

**ATTORNEYS FOR DEFENDANT
FACEBOOK, INC.**

Dated: June 27, 2014

DHILLON & SMITH LLP

By: /s/ Krista L. Shoquist
Harmeet K. Dhillon
Krista Lee Shoquist
DHILLON & SMITH LLP
177 Post Street, Suite 700
San Francisco, CA 94108
Tel.: 415-433-1700
Fax: 415-520-6593
harmeet@dhillonsmith.com
kshoquist@dhillonsmith.com

**ATTORNEYS FOR DEFENDANT GOWALLA
INCORPORATED**

ATTESTATION

I attest that concurrence in the filing of this document has been obtained from the other signatories listed above.

Dated: June 27, 2014

KERR & WAGSTAFFE LLP

By: /s/ Michael Ng
Michael Ng

[PROPOSED] ORDER

Pursuant to the stipulation of the parties and good cause appearing thereof, the above stipulation by and between Plaintiffs and Defendants through their respective counsel is granted.

Accordingly, the Court orders as follows:

1. Notwithstanding the amended pleading filed by Plaintiffs on today's date, (A) the Fraudulent Transfer Claims are deemed to have been re-pled in a timely manner in said pleading; and (B) the Fraudulent Transfer Claims are deemed dismissed by Plaintiffs voluntarily and without prejudice.

2. Any and all statute of limitations periods applicable to the Fraudulent Transfer Claims shall be and hereby are tolled during the period commencing on today's date and ending on the date of entry of a judgment for or against defendant Gowalla Incorporated in this action (the "Tolling Period"). .

3. Defendant Facebook, Inc., is dismissed as a party defendant in this action without prejudice in accordance with FRCP 41(a), each party to bear their own costs and fees. For the avoidance of doubt, this dismissal shall be without prejudice to Plaintiffs' right, in the event Plaintiffs obtain a judgment against defendant Gowalla Incorporated, to contend that Facebook is liable to Plaintiffs for some or all of the judgment on the basis of fraudulent transfer or conveyance.

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____, 2014

The Honorable Jon S. Tigar
United States District Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that on this day, June 27, 2014, I caused a copy of this STIPULATION TO PRESERVE APPELLATE RIGHTS OF PREVIOUSLY ASSERTED CLAIMS and Proposed Order to be served on all counsel of record via the CM/ECF system.

KERR & WAGSTAFFE LLP

By: /s/ Michael Ng
Michael Ng